

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1369-MSW-E TCEQ ID: RN100755727 CASE NO.: 36424
RESPONDENT NAME: WEIR BROS., INC.

Page 1 of 2

| | | |
|---|---|---|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input checked="" type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |

SITE WHERE VIOLATION(S) OCCURRED: 4523 Farm-to-Market Road 2931, Aubrey, Denton County

TYPE OF OPERATION: Sand pit and mulching facility

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired September 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Barham A. Richard Litigation Division, MC 175, (512) 239-0107
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563

TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Lee Weir, President, Weir Bros., Inc., 10721 Luna Road, Dallas, Texas 75220-7009

Respondent's Attorney: Mr. Mark Herndon, 10721 Luna Road, Dallas, Texas 75220-7009

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|--|--|
| <p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 29, 2008</p> <p>Date of NOE Relating to this Case: June 20, 2008</p> <p>Background Facts: The case was referred to the Litigation Division on January 9, 2009. The EDPRP was filed February 6, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and a signed Agreed Order was received on July 14, 2009.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>MSW: Failed to prevent the disposal of municipal solid waste at an unauthorized disposal site [30 TEX. ADMIN. CODE § 330.15(c)].</p> | <p>Total Assessed: \$39,400</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$1,250/\$38,150</p> <p>The Respondent paid \$1,250 of the administrative penalty. The remaining amount of \$38,150 shall be payable in 35 monthly payments of \$1,090 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Absence of management practices designed to ensure compliance based on two additional administrative orders in the previous 5-year period.</p> | <p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none">1. Immediately, cease accepting any recyclable materials or municipal solid waste at this Facility until properly authorized and in compliance with this order.2. Within 30 days, either:<ol style="list-style-type: none">a. Qualify for exemption from 30 TEX. ADMIN. CODE chs. 330 and 332 permitting and registration requirements by meeting the requirements of 30 TEX. ADMIN. CODE ch. 328; orb. Remove all waste and dispose of it at an authorized facility.3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

| | | | | | | |
|-------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 13-Aug-2008 | Screening | 21-Aug-2008 | EPA Due | |
| | PCW | 18-Aug-2008 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|----------------------|---------------------|--------------------|-------|
| Respondent | Weir Bros., Inc. | | |
| Reg. Ent. Ref. No. | RN100755727 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|---------------------------------|-----------------------|-----------------------|--------------------|
| Enf./Case ID No. | 36424 | No. of Violations | 1 |
| Docket No. | 2008-1369-MSW-E | Order Type | Findings |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | John Shelton |
| | | EC's Team | Enforcement Team 7 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$20,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 47.0% Enhancement Subtotals 2, 3, & 7 **\$9,400**

Notes: The Respondent had one NOV for the same or similar violation, one NOV with non-same or non-similar violations and two Agreed Orders with effective dates of June 9, 2005 and August 7, 2005.

Culpability No 0.0% Enhancement Subtotal 4 **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit 50.0% Enhancement* Subtotal 6 **\$10,000**

Total EB Amounts \$35,254
Approx. Cost of Compliance \$794,310
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$39,400**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$39,400**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$39,400**

DEFERRAL 0.0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$39,400**

Screening Date 21-Aug-2008

Docket No. 2008-1369-MSW-E

PCW

Respondent Weir Bros., Inc.

Policy Revision 2 (September 2002)

Case ID No. 36424

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100755727

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 1 | 5% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 2 | 40% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 47%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent had one NOV for the same or similar violation, one NOV with non-same or non-similar violations and two Agreed Orders with effective dates of June 9, 2005 and August 7, 2005.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 47%

| | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|--|---|-------|----------|-------|---------------|-------|----------|-------|---------|--|--|--|-----------|--|--|--|---------|---|
| Screening Date 21-Aug-2008 | | Docket No. 2008-1369-MSW-E | | PCW | | | | | | | | | | | | | | | | | |
| Respondent Weir Bros., Inc. | | <small>Policy Revision 2 (September 2002)</small> | | | | | | | | | | | | | | | | | | | |
| Case ID No. 36424 | | <small>PCW Revision June 12, 2008</small> | | | | | | | | | | | | | | | | | | | |
| Reg. Ent. Reference No. RN100755727 | | | | | | | | | | | | | | | | | | | | | |
| Media [Statute] Municipal Solid Waste | | | | | | | | | | | | | | | | | | | | | |
| Enf. Coordinator John Shelton | | | | | | | | | | | | | | | | | | | | | |
| Violation Number | | <div style="border: 1px solid black; width: 50px; text-align: center;">1</div> | | | | | | | | | | | | | | | | | | | |
| Rule Cite(s) | | <div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code § 330.15(c)</div> | | | | | | | | | | | | | | | | | | | |
| Violation Description | | <div style="border: 1px solid black; padding: 5px;">Failed to prevent the disposal of municipal solid waste at an unauthorized disposal site, as documented during an investigation conducted on April 29, 2008. Specifically, approximately 83,000 cubic yards of waste was disposed at the unauthorized site including brush, trees, sawdust, hay, manure, and rubbish.</div> | | | | | | | | | | | | | | | | | | | |
| Base Penalty | | | | <div style="border: 1px solid black; width: 100px; text-align: right;">\$10,000</div> | | | | | | | | | | | | | | | | | |
| >> Environmental, Property and Human Health Matrix | | | | | | | | | | | | | | | | | | | | | |
| OR | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td>Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td>Actual</td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> </tr> </table> | | | | Harm | | | Release | Major | Moderate | Minor | Actual | x | | | Potential | | | | Percent | <div style="border: 1px solid black; width: 50px; text-align: right;">50%</div> |
| | | Harm | | | | | | | | | | | | | | | | | | | |
| | Release | Major | Moderate | Minor | | | | | | | | | | | | | | | | | |
| Actual | x | | | | | | | | | | | | | | | | | | | | |
| Potential | | | | | | | | | | | | | | | | | | | | | |
| >> Programmatic Matrix | | | | | | | | | | | | | | | | | | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td>Falsification</td> <td></td> <td></td> <td></td> </tr> </table> | | | | Major | Moderate | Minor | Falsification | | | | Percent | <div style="border: 1px solid black; width: 50px; text-align: right;">0%</div> | | | | | | | | |
| | Major | Moderate | Minor | | | | | | | | | | | | | | | | | | |
| Falsification | | | | | | | | | | | | | | | | | | | | | |
| Matrix Notes | <div style="border: 1px solid black; padding: 5px;">Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.</div> | | | | | | | | | | | | | | | | | | | | |
| Adjustment | | | | <div style="border: 1px solid black; width: 100px; text-align: right;">\$5,000</div> | | | | | | | | | | | | | | | | | |
| | | | | <div style="border: 1px solid black; width: 100px; text-align: right;">\$5,000</div> | | | | | | | | | | | | | | | | | |
| Violation Events | | | | | | | | | | | | | | | | | | | | | |
| Number of Violation Events | | <div style="border: 1px solid black; width: 50px; text-align: center;">4</div> | <div style="border: 1px solid black; width: 50px; text-align: center;">114</div> | Number of violation days | | | | | | | | | | | | | | | | | |
| mark only one with an x | daily | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50px;"></td></tr> <tr><td style="text-align: center;">x</td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table> | | | | x | | | | | | | | | | | | | | | |
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| monthly | | | | | | | | | | | | | | | | | | | | | |
| quarterly | | | | | | | | | | | | | | | | | | | | | |
| semiannual | | | | | | | | | | | | | | | | | | | | | |
| annual | | | | | | | | | | | | | | | | | | | | | |
| single event | | | | | | | | | | | | | | | | | | | | | |
| Violation Base Penalty <div style="border: 1px solid black; width: 100px; text-align: right;">\$20,000</div> | | | | | | | | | | | | | | | | | | | | | |
| <div style="border: 1px solid black; padding: 5px;">Four monthly events are recommended from the April 29, 2008 investigation date to the August 21, 2008 screening date.</div> | | | | | | | | | | | | | | | | | | | | | |
| Good Faith Efforts to Comply | | 0.0% Reduction | | \$0 | | | | | | | | | | | | | | | | | |
| | | Before NOV NOV to EDRP/Settlement Offer | | | | | | | | | | | | | | | | | | | |
| Extraordinary | <div style="border: 1px solid black; width: 100px;"></div> | | | | | | | | | | | | | | | | | | | | |
| Ordinary | <div style="border: 1px solid black; width: 100px;"></div> | | | | | | | | | | | | | | | | | | | | |
| N/A | x | (mark with x) | | | | | | | | | | | | | | | | | | | |
| Notes | <div style="border: 1px solid black; padding: 5px;">The Respondent does not meet the good faith criteria for this violation.</div> | | | | | | | | | | | | | | | | | | | | |
| Violation Subtotal | | | | <div style="border: 1px solid black; width: 100px; text-align: right;">\$20,000</div> | | | | | | | | | | | | | | | | | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | | | | | | | | | | | | | | | | | | |
| Estimated EB Amount | | <div style="border: 1px solid black; width: 100px; text-align: right;">\$35,254</div> | Violation Final Penalty Total <div style="border: 1px solid black; width: 100px; text-align: right;">\$39,400</div> | | | | | | | | | | | | | | | | | | |
| This violation Final Assessed Penalty (adjusted for limits) | | | | <div style="border: 1px solid black; width: 100px; text-align: right;">\$39,400</div> | | | | | | | | | | | | | | | | | |

Economic Benefit Worksheet

Respondent Weir Bros., Inc.
Case ID No. 36424
Reg. Ent. Reference No. RN100755727
Media Municipal Solid Waste
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|-----------|-------------|-------------|------|----------|-----|----------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | \$794,310 | 29-Apr-2008 | 19-Mar-2009 | 0.89 | \$35,254 | n/a | \$35,254 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to remove approximately 83,000 cubic yards of waste and dispose of at an authorized facility. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$794,310

TOTAL

\$35,254

Compliance History

Customer/Respondent/Owner-Operator: CN600453450 Weir Bros., Inc. Classification: AVERAGE Rating: 36.00
Regulated Entity: RN100755727 WEIR BROTHERS SAND PIT Classification: POOR Site Rating: 237.0

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER DF0516J
MUNICIPAL SOLID WASTE NON ID NUMBER 455040152
Location: 4523 FM 2931, AUBREY, TX, 76227
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 21, 2008

Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 21, 2003 to August 21, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: John Shelton Phone: (512) 239-2563

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 06/09/2005 ADMINORDER 2004-1061-WQ-E
Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(a)

Description: Operating without a permit with permit is required. The regulated entity failed to obtain storm water permit coverage despite having full knowledge of the regulatory requirements for their industrial activity.

Effective Date: 08/07/2005 ADMINORDER 2004-1681-MLM-E
Classification: Major
Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)
Description: Failed to prevent unauthorized disposal of municipal solid waste at the Facility.

Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to comply with the general prohibition of outdoor burning.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/14/2004 (279014)

2 11/19/2007 (600454)
3 03/21/2008 (638658)
4 05/29/2008 (596457)
5 06/24/2008 (654073)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/09/2004 (270661)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

5C THC Chapter 382, SubChapter A 382.085(a)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: On April 22, 2004, four occurrences of unauthorized outdoor burning at Weir Brothers Sand Pit were documented. These burn sites contained the remains of unauthorized materials hauled in from off-site locations consisting of timber, various plastic, metal, and rubber materials.

Date 11/16/2007 (600454)

Self Report? NO

Classification Major

Citation: 30 TAC Chapter 330, SubChapter A 330.5(c)

Description: Failed to prevent unauthorized disposal of municipal solid waste at the Facility.

Self Report? NO

Classification Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to comply with the general prohibition of outdoor burning.

Self Report? NO

Classification Major

Citation: 2A TWC Chapter 7, SubChapter A 7.051(a)(1)(B)

Description: Failed to comply with the Ordering Provisions of Commission Order Docket No. 2004-1681-MLM-E.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WEIR BROS., INC.;
RN100755727**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1369-MSW -E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Weir Bros., Inc. ("Weir Bros.") under the authority of TEX. WATER CODE ch. 7, TEX. HEALTH AND SAFETY CODE ch. 361, and the rules of the TCEQ. The Executive Director of the TCEQ, represented by the Litigation Division, and Weir Bros., represented by their attorney Mr. Mark A. Herndon, presented this agreement to the Commission.

Weir Bros. understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Weir Bros. agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Weir Bros.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Weir Bros. owns and operates a sand pit and mulching facility located at 4523 Farm-To Market Road 2931, Aubrey, Denton County, Texas (the "Facility").
2. During an investigation conducted on April 29, 2008, a TCEQ Dallas / Fort Worth Regional Office investigator documented that Weir Bros. failed to prevent the disposal of municipal solid waste at an unauthorized disposal site. Specifically, approximately 83,000 cubic yards of waste was disposed at the unauthorized site including brush, trees, sawdust, hay, manure, and rubbish.

3. Wier Bros. received notice of the violations on or about June 25, 2008.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact No. 1, Weir Bros. is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH AND SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, Weir Bros. failed to prevent the disposal of municipal solid waste at an unauthorized disposal site, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Weir Bros. for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of thirty-nine thousand four hundred dollars (\$39,400.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Weir Bros. paid one thousand two hundred fifty dollars (\$1,250.00) of the administrative penalty. The remaining amount of thirty-eight thousand one hundred fifty dollars (\$38,150.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one thousand ninety dollars (\$1,090.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Weir Bros. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Weir Bros. to meet the payment schedule of this Agreed Order constitutes the failure by Weir Bros. to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. It is, therefore, ordered by the TCEQ that Weir Bros. pay an administrative penalty as set forth in Conclusion of Law No. 4, above. The payment of this administrative penalty and Weir Bros.'s compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the

Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Weir Bros., Inc.; Docket No. 2008-1369-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Weir Bros. shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Weir Bros. shall cease accepting any recyclable materials or municipal solid waste at this Facility until properly authorized and in compliance with this order.
 - b. Within 30 days after the effective date of this Agreed Order, Weir Bros. shall:
 - i. Qualify for exemption from 30 TEX. ADMIN. CODE chs. 330 and 332 permitting and registration requirements by meeting the requirements of 30 TEX. ADMIN. CODE ch. 328; or
 - ii. Remove all waste and dispose of at an authorized facility; and
 - c. Within 45 days after the effective date of this Agreed Order, Weir Bros. shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. through 2.b.ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Weir Bros. shall submit copies of documentation necessary to demonstrate

compliance with these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951


3. The provisions of this Agreed Order shall apply to and be binding upon Weir Bros. Weir Bros. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility referenced in this Agreed Order.
4. If Weir Bros. fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Weir Bros.'s failure to comply is not a violation of this Agreed Order. Weir Bros. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Weir Bros. shall notify the Executive Director within seven days after Weir Bros. becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Weir Bros. shall be made in writing to the Executive Director. Extensions are not effective until Weir Bros. receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Weir Bros. if the Executive Director determines that Weir Bros. has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

8. This Agreed Order, issued by the Commission, shall not be admissible against Weir Bros. in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed to Weir Bros., or three days after the date on which the Commission mails notice of this Agreed Order to Weir Bros., whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

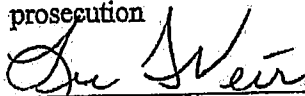
8/24/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Weir Bros., Inc., and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Weir Bros., Inc. compliance history;
- Greater scrutiny of any permit applications submitted by Weir Bros., Inc.;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Weir Bros., Inc.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Weir Bros., Inc.; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution


Signature

8/24/09
Date

Lee Weir
Name (Printed or typed)
Weir Bros., Inc.

Pres.
Title